

Planning Commission Date: March 22, 2006

Item No.

42

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

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Public Hearing: Yes: X No:

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TITLE: **TIME EXTENSION NO. TE2006-1**

Proposal: A request for a one-time 18-month time extension for a new 47,990 square foot multi-purpose animal facility with associated site improvements located in the Ames Industrial Park at 901 Ames Avenue.

Location: 901 Ames Avenue (APN 86-31-006)

RECOMMENDATION: **Approve with conditions.**

Applicant: Humane Society of Silicon Valley, c/o George Miers, 1150 Moraga Way, #150, Moraga, CA 94556

Property Owners: Humane Society of Silicon Valley, c/o Christine Benninger, 2530 Lafayette Street, Santa Clara, CA 95050-2602

General Plan Designation: Manufacturing and Warehousing

Present Zoning: Heavy Industrial ("M2")

Existing Land Use: Vacant Industrial Building

Agenda Sent To: Applicant/owner

Attachments: Plans and project description.

BACKGROUND

In September 2004, the Planning Commission approved 'S' Zone Approval No. SZ2004-3, Use Permit No. UP2004-7, and a Mitigated Negative Declaration No. EA2004-8 for the construction of a 47,990 square foot multi-purpose animal facility with associated site improvements including the removal of 13 protected trees, an ancillary retail shop, a dog park, and compact parking located in the Ames Industrial Park.

To date there are no site modification installed or constructed.

Site Description

The proposed project is located on a 4.86-acre parcel located on the north side of Ames Avenue, between Sinclair Frontage Road and Berryessa Creek. A vacant industrial building, approximately 57,000 sq. ft. in size is located on the northern portion of the parcel. The remaining southern portion of the site is undeveloped and consists of an open, disked field. Mature landscaping along the perimeter of the property consists of street trees and a grass berm along Ames Avenue. Oleanders trees are located along the east and west property lines, and a row of thirteen (13) London Plantrees trees is located between the developed and undeveloped portions of the parcel. Access to the site is provided off Ames Avenue by two driveways located along the east and west portions of the property. Surrounding parcels are developed with industrial and warehouse buildings. Surrounding businesses include EMS Recycling Company, Micro-Scientific Glass Blowing, US Filter, Infinity Packaging, and HK Tooling & Design. Provide below is an aerial photo of the project site.



Project Description

The applicant is requesting a Time Extension for an approved Site and Architectural and Use Permit approval for the demolition of an existing 58,000 square foot industrial building and development of a new 47,990 square foot, one-story building with site improvements and parking modifications for a multi-purpose animal facility that include an animal daycare, pet boarding, dog park, pet store, medical/surgical rooms, exercise courtyards, classrooms, and administrative

offices. As previously approved, the site improvements will be constructed in 2 phases to allow the applicant flexibility to develop the project within fundraising parameters. The project will be phased as follows:

<i>Phase I</i>	<i>Phase II</i>
<ul style="list-style-type: none"> Outdoor dog park 	<ul style="list-style-type: none"> Subdivision of dog park to large and small dog areas, separated by pedestrian walkway with two circular trellises, benches, vinyl clad chain link fencing and landscaped berms
<ul style="list-style-type: none"> Parking 	<ul style="list-style-type: none"> Enhanced “art fence” around dog park and exercise areas
<ul style="list-style-type: none"> Pedestrian walkways 	<ul style="list-style-type: none"> Secondary pathways scored-concrete
<ul style="list-style-type: none"> Vinyl clad chain link fencing around the dog park, exercise areas and perimeter of property 	<ul style="list-style-type: none"> Inset concrete radiating bands at entry and visitor parking area
<ul style="list-style-type: none"> Scored-concrete walkway at entrance 	<ul style="list-style-type: none"> Animal plant sculptures (topiaries)
<ul style="list-style-type: none"> Decomposed granite for overflow parking areas and secondary pathways 	<ul style="list-style-type: none"> 4 additional exercise areas
<ul style="list-style-type: none"> Security gates to staff parking areas 	<ul style="list-style-type: none"> 3-foot tall bollards and topiaries at circular drop-off
<ul style="list-style-type: none"> Lighting-perimeter, building 	<ul style="list-style-type: none"> Additional landscaping
<ul style="list-style-type: none"> Modified site landscaping 	
<ul style="list-style-type: none"> Monument sign 	

TIME EXTENSION REQUEST

Pursuant to Zoning Ordinance Section 64.04 (Time Extensions), the applicant is requesting a time extension of the previous Site and Architecture Review and Use Permit approvals. As with any permit approval granted under the terms of the zoning ordinance, a permit expires in eighteen (18) months if not used or exercised. As defined in Section 64.04-2, a permit is “used” or “exercised” if the applicant obtains a building permit and completes a foundation, or dedicates any land or easement as required from the zoning action, or complies with legal requirements necessary to commence the use, or obtains an occupancy permit, whichever is sooner.

To date, the applicant has not “used” or “exercised” their permit. Since their original approval, the applicant has submitted construction drawings for building permits. The applicant is also requesting additional time to raise funds to cover the cost of construction of the new facility.

RECOMMENDATION

Close the public hearing. Approved Time Extension No. TE2006-1 for SZ2004-3, UP2004-7 and EA2004-8 based on the previous Findings and Recommended Special Conditions of Approval.

FINDINGS

- 1) The Initial Study and Mitigated Negative Declaration (EIA No. EA2004-8) prepared for this project represents the independent review of the City of Milpitas Planning Staff and Planning Commission.
- 2) The proposed project, as mitigated, will not create any significant environmental impact as defined by the California Environmental Quality Act (CEQA).
- 3) The proposed project is consistent with Guiding Policies and Implementing Principles 2.a-I-2, 2.a-I-10, 2.a-I-6 and 2.a-I-3 of the General Plan in that the proposed animal facility will beautify the existing industrial area with an outdoor dog park and significant landscaping, as well as strengthen and promote surrounding development and provide opportunities for future economic pursuits. In addition, the overall development will be an in-fill project replacing an existing heavy industrial type uses.
- 4) As conditioned, the proposed project is consistent with the City of Milpitas Zoning Ordinance in terms of land use and development standards in that an animal facility is a permitted use and the proposed compact parking, dog park and ancillary retail commercial use area all conditionally permitted, following review and approval by the Planning Commission.
- 5) As conditioned, the layout of the site, design of the proposed building, and landscaping would be compatible and aesthetically harmonious with adjacent and surrounding development. The proposed building is located at the rear of the parcel, materials include corrugated metal and aluminum trim, the design incorporates industrial linear elements and proposed landscaping will enhance the industrial district.
- 6) Since the animal facility project would be adjacent to and surrounded by existing and future industrial development, no adverse impact such as shadows, view obstruction, or loss of privacy are anticipated.

SPECIAL CONDITIONS

1. These uses shall be conducted in compliance with all appropriate local, state and federal laws and regulations. (P)

2. This "S" Zone Approval (SZ2004-3) is for one, approximately 47,990 square foot building and associated site improvements, including the removal of 19 protected trees, in accordance with the plans approved on October 27, 2004, and as amended by the conditions below. Any modification to the project as proposed will require an "S" Zone Approval-Amendment by the Planning Commission. Minor modifications can be submitted to the Planning Division for processing, as per Section 42.10 of the zoning code. (P)
3. Prior to issuance of building permits, the landscape plans shall reflect that all major building accent trees and parking space shade trees shall be a minimum of 24-inch box. (P)
4. The applicant shall provide details of the proposed building wall mounted light fixtures to the Planning Division for review. (P)
5. Prior to building permit issuance, the applicant shall provide details of the proposed trash enclosure painted to match the proposed building and connected to the sanitary sewer for spills and cleaning. (P)
6. Prior to issuance of building permits, the plans shall indicate all proposed utility connections are placed underground or in subsurface conduits. (P)
7. Prior to building permit issuance, the applicant shall submit details of air conditioning unit A-5, along with a cross section of roof and roof screen, to ensure the air conditioning unit will reside at or below the building rooftop screen on all elevations. In addition, a standard condition of approval that roof top equipment shall not exceed the height of the roof screen or parapet shall be applied.
8. Prior to the issuance of any permit for any roof-top equipment which projects above the height of any existing parapet wall or screen, detailed architectural plans for the screening of this equipment and/or line-of-sight view analysis demonstrating that the equipment will not be visible from surrounding view points shall be reviewed and approved by city staff in order to assure the screening of said equipment is in keeping with and in the interest of good architectural design principles. (P)
9. The decomposed granite parking areas shall be kept to where surfaces remain uneroded and level of service maintained. (P)
10. During all construction activities on-site, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD:
 - a) Watering all exposed or disturbed soil surfaces, at least twice daily, as necessary to eliminate visible dust plumes;
 - b) Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2 feet freeboard level within their truck beds;
 - c) Enclose, cover, water twice daily or apply (non-toxic) soil binders to exposed stockpiles of debris, soil, sand, or other materials;
 - d) Suspension of all earthmoving or other dust-producing activities or equipment during periods of high winds when watering cannot eliminate visible dust plumes;

- e) Apply water 3 times daily or apply (non-toxic) soil binders on all unpaved access roads parking areas and staging areas at construction sites;
 - f) Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
 - g) Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets;
 - h) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more).
 - i) Limit traffic speeds on unpaved areas to 5 mph.
11. Measures shall be incorporated into project plans prior to issuance of any building permits:
- a) To the extent feasible, minimize the amount of run-off that drains directly to the storm drain system. Possible solutions may include the following mitigation measures:
 - b) Directing run-off to landscaped areas for natural infiltration.
 - c) Direct run-off to catch basins or holding areas to capture runoff and allow to infiltrate into the soil.
 - d) Re-grade the site so that most surface run-off will be directed to proposed landscaped areas.
12. Building permit plans shall show roof downspouts shall drain to landscape areas to the greatest extent possible. (P)
13. Prior to building permit issuance, the applicant shall submit details on the proposed building exterior wall-mounted light elements to the Planning Division for review and approval. (P)
14. During construction, the developer/applicant shall adhere to the following Best Management Practices (BMPs) as suggested in the Santa Clara Valley Non-point Source Pollution Control Program's "Best Management Practices for Industrial Storm Water Pollution Control": (P)
- a) Store building materials under cover or in enclosed areas.
 - b) Before painting, spread a ground cloth to collect paint.
 - c) Mix paint indoors before starting work.
 - d) Keep paint buckets away from contact with storm water.
 - e) Capture any paint spills before they flow into a storm drain.
 - f) During painting cleanup use proper procedures and prevent paint from flowing into storm drains.
15. This Use Permit approval No. UP2004-7 is for a dog park, ancillary commercial retail sales and 19 compact parking spaces, as shown on approved plans dated October 27, 2004, except as may be otherwise modified by these conditions of approval. Any modifications to compact parking spaces, dog park or change in nature of the operation shall require review

and approval by the Planning Commission of an amendment to this Use Permit. Minor changes, as per Sec. 42-10-2 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Commission Subcommittee or Planning Division staff. (P)

16. Commencing on January 1, 2005, within 30 days prior to any grading, disking for fire or weed control, or site improvement permit issuance, the applicant shall submit to the Planning Division a Western Burrowing Owl survey performed by a qualified ornithologist. The survey shall be valid for 30 days, after which time a new survey will be required prior to any site/soil disturbance. The purpose of the survey is to locate any individual or owl pairs presently on-site and to be sure that they are included in subsequent mitigation efforts. Impacts to burrowing owls shall be mitigated through the protection and enhancement of off site habitat at a 1:1 acreage replacement ratio. The mitigation plan shall be submitted to the Planning Division for approval and to the Department of Fish & Game as a courtesy. No grading or construction activity within habitat areas shall be allowed until the mitigation plan has been approved by the City Planning Division and the applicant has agreed to the mitigation measures or until such time as the applicant has entered into an agreement with the City to mitigate this impact, through a legal document approved by the City Attorney; this may include participation in a Citywide mitigation program. If so desired, the applicant may choose to enter into a mitigation agreement with the California Department of Fish & Game in lieu of an agreement with the City. The City shall accept a mitigation agreement between the applicant and DF&G as full compliance with the requirement for mitigation of burrowing owl habitat loss. (Mitigation Measure IV-a-1) (P)
17. Prior to demolition permit issuance or any pre-demolition activities, an asbestos and lead-based paint survey shall be performed. (Mitigation Measure VII-a-1) (P)
18. Prior to condition of approval for any demolition activity, if asbestos-containing materials are determined to be present, the materials shall be abated by a certified asbestos abatement contractor in accordance with the regulations and notification requirements of the Bay Area Air Quality Management District. If lead-based paint is identified, then federal and State construction worker health and safety regulations shall be followed during renovation or demolition activities. If loose or peeling lead-based paint is identified, it shall be removed by a qualified lead abatement contractor and disposed of in accordance with existing hazardous waste regulations. In addition, if lead-based paint is identified, a contamination mitigation plan shall be submitted to and approved by the Department of Toxic Substance. (Mitigation Measure VII-a-2) (P)
19. Prior to occupancy, the Emergency Action Plan (EAP) shall be revised to include identification of key personnel in the implementation of the plan, training documentation, written evacuation plan showing evacuation routes, shelter in place and assembly areas, and location of emergency equipment. Once the Emergency Action Plan has been completed it shall be submitted to the Milpitas Fire Department for review for completeness prior to implementation. (Mitigation Measure VII-b-1) (P, F)
20. Before implementing the Emergency Action Plan, the employer shall designate and train a sufficient number of persons to assist in the safe and orderly emergency evacuation of employees. (Mitigation Measure VII-b-2) (P, F)

21. A drill utilizing all employees in their functions in the Emergency Response Plan, shall be scheduled and completed in the presence of the fire department prior to occupancy. This drill is to be completed on an annual basis. Also, monthly drills shall be conducted on site with Humane Society staff. All training drills shall be documented. (Mitigation Measure VII-b-3) (P, F)
22. A windsock or other approved wind/weather monitoring device shall be placed on site to aid in determining wind direction in the event of a nearby hazardous material release. (Mitigation Measure VII-b-4) (P, F)
23. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
24. Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
25. At the time of building permit plan check submittal the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to any building permit issuance. (E)
26. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities which disturb 1 acres or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
27. The developer shall comply with Regional Water Quality Control Board's C-3 requirements and implement the following:
 - i. At the time of building permit plan check submittal, the developer shall submit a "final" Stormwater Control Plan and Report. Site grading, drainage, landscaping and building

plans shall be consistent with the approved Stormwater Control Plan. The Plan and Report shall be prepared by a licensed Civil Engineer and certified that measures specified in the report meet the C-3 requirements of the Regional Water Quality Control Board (RWQCB) Order, and shall be implemented as part of the site improvements.

- ii. Prior to building permit issuance, the developer shall submit an Operation and Maintenance (O&M) Report for the long-term operation and maintenance of C-3 treatment facilities.
 - iii. Prior to Final occupancy, the developer shall execute and record an O&M agreement with the City for the operation, maintenance and annual inspection of the C-3 treatment facilities.
 - iv. Prior to building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along Ames Avenue, including but not limited to curb and gutter, sidewalk, signage, striping, fire hydrants, storm drain, sewer and water services. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. (E)
28. Prior to building permit issuance, the developer shall dedicate necessary sidewalk and public service utility easements, as further shown on Engineering Services Exhibit "S" (dated 9/28/2004). (E)
29. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation, as further shown on Engineering Services Exhibit "S" (dated 9/28/2004). (E)
30. Based on the information submitted and the City records, this parcel does not appear to be a legal parcel of record. Before building permit issuance, the developer shall submit a title search to establish the legality of this parcel, obtain a Certificate of Compliance or file a parcel map. (E)
31. Prior to occupancy permit issuance, the applicant shall construct a trash enclosure, designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the trash enclosure. (E)
32. Prior to occupancy permit issuance, the property owner/manager shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial services:
- i. An adequate level of service for TRASH collection; minimum service level of 2-4 yard trash bin collected 3 times per week.
 - ii. An adequate level of service for RECYCLE collection; minimum service level of 2-4 yard recycle bin collected 3 times per week.
 - iii. After the applicant has started its business, BFI commercial representative shall determine the adequacy of the solid waste level of services. If services found to be inadequate, the

property owner/manager shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264. (E)

33. Per Chapter 200, Title V of Milpitas Municipal Code (Ord. No. 48.7) solid waste enclosures shall be designed to limit the accidental discharge of any material to the storm drain system. The storm drain inlets shall be located away from the trash enclosures (a minimum of 25 feet). This is intended to prevent the discharge of pollutants from entering the storm drain system, and help with compliance with the City's existing National Pollution Discharge Elimination System (NPDES) Municipal permit. (E)

34. Prior to any work within public right of way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E)

35. The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division.:

- i. Water Service Agreement(s) for water meter(s) and detector check(s).
- ii. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)

36. In accordance with Chapter 5, Title VIII (Ord. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:

- i. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.
- ii. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord No 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check package. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection.

37. Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)

38. At the time of building plan check submittal, the developer shall incorporated the changes shown on Engineering Services Exhibit "S"(dated 9/28/2004) in the design plans and submit three sets of civil engineering drawings showing all proposed utilities to the Land Development Engineer for plan check. (E)